

DEVELOPMENT AND PANCHAYAT DEPARTMENT

The 17th/22nd January, 1973

No. 48-IRDB-73/45.—With reference to Haryana Government Notification No. 1433-IRDB-72/653, dated 26th June, 1972, the Governor of Haryana is pleased to extend the term of the Advisory Committee constituted to examine ways and means of providing community latrines and improving sanitation in the rural areas of Haryana up to 26th February, 1973.

KULWANT SINGH, Secy.

The 19th/22nd January, 1973

No. 346-2 ECD I-73/768.—Shri Tahal Dass, Social Education and Panchayat Officer will hold the current charge of the Block Development and Panchayat Officer, Hathin Block temporarily in addition to his own duties without extra allowances till a regular Block Development and Panchayat Officer is posted in that Block.

2. While holding the charge, the afore-mentioned officer shall exercise the powers of Drawing, Disbursing and Controlling Officer in respect of the Hathin Block.

M. L. TRIGHATIA,
Deputy Secretary.

LABOUR DEPARTMENT

The 19th January 1973.

No. 550.4Lab.7./1987.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s K.P. Industries, Bahadurgarh :—

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 88 of 1970

between

Shri Lok Mani and the management of M/s K.P. Industries, Bahadurgarh.

Present—

Shri Onkar Parshad, for the workman.

Shri D.C. Chadha, for the management.

AWARD

Shri Lok Mani concerned workman was in the service of M/s K.P. Industries, Bahadurgarh as a Chowkidar since 7th November, 1968. The management terminated his services w.e.f. 2nd February, 1969. On 4th February, 1969, Shri Onkar Parshad, General-Secretary of the Loh Udyog Karamchari Sangh gave the demand notice asking for reinstatement of Shri Lok Mani with full back wages whereupon conciliation proceedings were initiated which however, ended in failure. The Governor of Haryana by order No. ID/RK/468-69/14027-31, dated 15th May, 1969, referred the above dispute for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 with the following term of reference :—

“Whether the termination of services of Shri Lok Mani was justified and in order ? If not, to what relief is he entitled ?”

Usual notices were given to the parties and they put in their respective written statements. The workman reiterated his claim for reinstatement and back wages contending that the termination of his service was illegal and unjustified. The management, on the other hand, pleaded that this workman had been employed only as a Badli Chowkidar in place of the regular Chowkidar and he had left service of his own accord after 2nd February, 1969 and alternative arrangement had, therefore, to be made in his place.

The following issues arose for determination from the pleadings of the parties :—

1. Whether the claimant Shri Lok Mani was employed as a Badli Chowkidar on 10th November, 1968 in place of regular employee ?
2. Whether the claimant absented himself from duty after 2nd February, 1969 and the management was compelled to make hurried arrangement to find a substitute ?

3. If the above issues are found in favour of the workman, whether the termination of services of Shri Lok Mani was justified and in order? If not, to what relief is he entitled?

The management has examined one witness Shri Pawan Kumar Jain, Partner. According to him Shri Lok Mani concerned workman has been engaged as a Badli Chowkidar in place of the regular Chowkidar who had proceeded on leave for a period of one month but since that Chowkidar never reported for duty on the expiry of his leave Shri Lok Mani continued in service. He has further stated that Shri Lok Mani also had voluntarily left services on 2nd February, 1969, and after waiting for 4 or 5 days, the management had to make an alternative arrangement of a Chowkidar. According to him no demand notice had been received from Shri Lok Mani asking for reinstatement.

Shri Lok Mani had made his own statement and his authorised representative Shri Onkar Parshad has also come into the witness box as W.W.2. He has proved the complaint Ex. W.W. 2/1 alleged to have been made by this workman to the Union, demand notice dated 4th February, 1969 Ex. W.W.2/2 and report lodged with the S.H.O. Bahadurgarh Ex. W.W.2/3 under postal certificate Ex. W.W.2/4. In cross-examination Shri Onkar Parshad has admitted that this workman was not a member of the union before he made the complaint Ex. W.W.2/1.

The case has been argued on both sides and I have given a careful consideration to the facts on record and the contentions raised by the learned representatives of the parties. It is a common ground between the parties that Shri Lok Mani concerned workman had put in service for a short period of 2 months 25 days before his name was struck off the rolls by the management on 2nd February, 1969 and thereafter another Chowkidar has been continuously working in his place. The management did not level any charge of mis-conduct or mis-behaviour against him and it was a case of termination of services simpliciter on account of the voluntary absence from duty of the workman himself. The post of a Chowkidar could not be left vacant beyond a reasonable time and the management had to make alternative arrangement. It does not appear to be a case of victimisation on account of any trade union activity on the part of Shri Lok Mani, Chowkidar and nothing of the sort has been mentioned in the statement of claim. According to the statements of his own witness Shri Onkar Parshad, Secretary, Loh Udyog Karamchari Sangh who had given the demand notice leading to the present reference, this workman was not a member of the union before 2nd February, 1969, when his services were terminated. The question might arise as to how the said union was competent to take up his dispute. I have been referred to the complaint Ex. W.W.2/1 said to have been made by this workman to the union regarding the ill-treatment meted out to him by the management. This complaint does not bear any date and it is not shown to whom it is addressed. It was not put to Shri Pawan Kumar Jain Partner when he came into the witness box as M.W.1. The learned representative of the management contends that it is only an after thought. At any rate this piece of evidence deserves no credence in the absence of any allegation of victimisation or malafides on the part of the management in the statement of claim filed in the court on behalf of the workman.

For the reasons aforesaid, I do not find any thing wrong with the termination of services of Shri Lok Mani who had worked as a Chowkidar for the short periods of 2 months 25 days and left service on 2nd February, 1969 of his own accord. The issues numbers 1 to 3 are accordingly decided against him and it is held that he is not entitled to any relief by way of reinstatement or re-employment and back wages or compensation in lieu thereof. It will not be out of place to mention here that he has not lead an iota of evidence to show that he has not been gainfully employed or that he had made efforts to get some alternative job after his name had been struck off the rolls by the management on 2nd February, 1969.

The workman being thus not entitled to any relief and the reference is accordingly answered against him. There shall be no order as to cost.

Dated the 10th January, 1973

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 79, dated the 12th January, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 548-41.ab-73/1988.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Prestolite of India Ltd., Mathura Road, Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 150 of 1971

between

Shri Vishav Nath and the management of M/s Prestolite of India Ltd., Mathura Road, Faridabad.

Present—

Shri Amar Singh, for the workman.

Shri S.L. Gupta, for the management.

AWARD

By order No. ID/FD/107-F.71/24483-87, dated 2nd August, 1971 of the Governor of Haryana, the following dispute between the management of M/s Prestolite of India Ltd., Mathura Road, Faridabad and its workman Shri Vishav Nath, helper was referred for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947.

“Whether the termination of services of Shri Vishav Nath was justified and in order? If not, to what relief is he entitled?”.

Usual notices were given to the parties and they put in their respective written statements. According to the management this workman had absented himself from duty without showing any reasonable ground and his name had, therefore, to be struck off the rolls w.e.f. 6th May, 1971. Shri Vishav Nath concerned workman has contravened the above allegation of the management and pleaded that the management had in fact terminated his services without any justification. According to him he had been granted leave for 2 days on 26th April, 1971 in connection with the marriage of his sister and since he was taken ill he had applied for extension of his leave for 8 days but the management did not allow him to resume work when he reported for duty on 5th May, 1971.

From the pleadings of the parties the only issue that arose for determination in the case was as per the term of reference stated above.

The management has examined one witness Shri Om Parkash Malhotra, Factory Manager and placed reliance upon certain documents including Medical Certificate Ex. M.W. 1/1, leave application, dated 26th April, 1971 Ex. M.W. 1/2, another leave application, dated 28th April, 1971 Ex. M.W. 1/3, still another leave application, dated 30th April, 1971 Ex. M.W. 1/4, copy of the letter, dated 30th April, 1971 sent to him by the management Ex. M.W. 1/5, copy of another letter, dated 6th May, 1971 Ex. M.W. 1/6, application of the workman Ex. M.W. 1/7 and extract from the Model Standing Orders (clause 16) M.W. 1/8.

Shri Vishav Nath has made his own statement and produced Medical Certificate, dated 27th April, 1971 from the Doctor H.R. Sharma, registered Medical Practitioner Ex. W.W. 1/1.

I have heard the learned representatives of the parties and considered the facts on records. The case put forward on behalf of the management is simple. According to the averments made in the written statement this workman had absented himself from duty w.e.f. 26th April, 1971, after working in the factory on 23rd April, 1971 and 24th April, 1971, 25th April, 1971, being Sunday and his weekly off. The management received his leave application for 26th April, 1971 and 27th April, 1971, on the ground that he had to attend the marriage of his relative. Another leave application was received on 28th April, 1971, asking for 2 days leave for 27th April, 1971 and 28th April, 1971 on the ground that he was not feeling well. Still another application was received asking for leave from 29th April, 1971 to 5th May, 1971 on account of illness. The management had written back to him on 30th April, 1971, that his leave applications had been rejected and that he should send medical certificate from the E.S.I. Dispensary in support of his plea of illness. He, however, did not send any medical certificate as directed and did not report for duty till 6th of May, 1971 when his name was struck off the rolls and this fact was communicated to him on 7th of May, 1971 when he came to the factory but did not afford any satisfactory explanation for his continuous absence from duty for more than 10 days. These facts have been fully established from the documents produced by the management referred to above read with the statement of the factory Manager Shri Om Parkash Malhotra. Shri Vishav Nath had no doubt been submitting leave applications but on different grounds and the management was, therefore, with in its right to reject the same. The fact that the leave applied for had not been sanctioned was duly communicated to him and he was advised to report for duty and produce Medical Certificate from the E.S.I. Dispensary to support his plea of illness. He, however, did not care to comply with this direction of the management and continued to remain absent from duty for more than 10 days conjunctively. The management had, therefore, no alternative but to strike his name off the rolls and it was fully competent to do so according to the Model Standing Orders which would apply to the facts of the present case in the absence of any Certified Standing Orders of the Company. As would be clear from the perusal of M.W.1/1, this workman had earlier produced medical certificate from the E.S.I. Dispensary when he had applied for leave for 16th April, 1971. It has not been explained as to why he could not produce the medical certificate from the E.S.I. Dispensary in proof of his illness for the period of his absence in question when the management had specifically asked for it. The Medical Certificate from a Private Practitioner Ex. W.W. 1/1 which purports to be of 27th April, 1971 and recommends rest from 27th April, 1971 to 4th May, 1971 on account of the attack of dysentery does not appear to be a genuine one and no reliance could safely be placed upon this document.

For the reasons aforesaid, the issue involved in the case is decided against the workman and it is held that he is not entitled to any relief by way of re-instatement and back wages. The award is made accordingly. No order as to costs.

Dated 9th January, 1973.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 81, dated the 12th January, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 549-4Lab-73/1990.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Eros Cinema, Old Railway Road, Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA ROHTAK

Reference No. 227 of 1971

Between

SHRI PREM PARKASH AND THE MANAGEMENT OF M/S EROS CINEMA, OLD RAILWAY ROAD, GURGAON

Present—

Shri C.B. Kaushik for the workman.
Shri D.C. Chadha for the management.

AWARD

Shri Prem Parkash an employee of M/s Eros Cinema, Old Railway Road, Gurgaon was dismissed from service by order dated 16th July, 1971. He raised a demand for his reinstatement but without success. The matter was then taken up for conciliation and, on receipt of the failure report from the Conciliation Officer, Gurgaon, the Governor of Haryana by order No. ID/GG/40-A-71/32607-12, dated 8th November, 1971 referred the dispute for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, the term of reference being as given under :—

“Whether the termination of services of Shri Prem Parkash was justified and in order? If not, to what relief is he entitled?”

Usual notices were given to the parties and they put in their respective written statements. Shri Prem Parkash had earlier brought an application under section 33-C(2) of the Industrial Disputes Act, 1947 asking for computation of his wages as per particulars given in the application. The management contested both the reference as well as the application under section 33-C(2) on merits pleading inter alia that the duties performed by Shri Prem Parkash were of managerial and administrative nature and as such he was not a workman as defined under section 2—8 of the Industrial Disputes Act, 1947 and this court had, therefore, no jurisdiction in the matter. Shri Prem Parkash controverted the above allegation of the management and urged that he had never worked as a Manager but as a Booking Clerk in the Cinema and his pay was Rs 300 P.M.

The parties have been heard on the aforesaid preliminary issue; whether the applicant was performing duties of managerial and administrative nature and as such the present reference is invalid. The issue being common in both the cases, the same have been consolidated for purposes of convenience and to avoid duplication of work.

On behalf of the management Shri C.B. Kakkar, General Manager has come into the witness box and made a detailed statement regarding the appointment of Shri Prem Parkash as Assistant Manager and then his promotion as Manager and the various duties performed by him as Manager. Reliance has also been placed upon a large number of documents including attendance registers, inspection note books, statements showing daily sale of tickets, cash vouchers, Cinema passes and some correspondence exchanged between the management and the Municipal Committee, Gurgaon as well as the Excise Department which are exhibited as Ex. M.1 to M.13. Most of the documents produced by the management have been admitted by Shri Prem Parkash.

Shri Prem Parkash claimant, on the other hand, has made his own statement besides examining Shri Prit Singh, Clerk office of the Labour Inspector, Gurgaon who has deposed that the registration of this Cinema under the Punjab Shops & Commercial Establishments Act book place on 1st April, 1966, —vide copy of the entry from the register in form 'H' Ex. W.W. 2/1 with the name of Shri C.B. Kakkar as its Manager. According to him there was no provision for recording the change of the Manager at a subsequent time in the said record. Shri Prem Parkash has further brought on record 3 leave applications made by Jitu Ram and Hukam Singh employees of the Cinema Ex. W., W.2, W.3, a copy of report lodged with the police on 29th January, 1971 Ex. W.4, a complaint made by the employees of Eros Cinema to the Labour Officer, Gurgaon that the management had obtained their signatures and thumb-impressions on blank papers and vouchers Ex. W. 5.

The case has been fully argued on both sides. Written arguments have also been filed. I have given a very careful consideration to the contentions of the parties and the facts on record. A close scrutiny of the evidence on record, both oral as well as documentary, leads to the following irresistible conclusions.

1. That Shri Prem Parkash the present claimant had joined service with M/s Eros Cinema, Old Railway Road, Gurgaon as Assistant Manager when Shri C.B. Kakkar was the Manager and when the latter became the General Manager he was promoted as Manager and was also provided residential accommodation in the Cinema premises.
2. That the various duties performed by him were of managerial and administrative nature such as general supervision and checking of the work in the Cinema by holding surprise visits, marking attendance of the other employees, issuing of Cinema passes, preparation of statements showing daily sale of tickets, submission of relevant statements to the Excise Department as well as the Municipal Committee at Gurgaon, sanction of leave to other employees and to make alternative arrangements in place of the employee or employees proceeding on leave.

The management has brought on record all the relevant documents relating to the aforesaid duties performed by Shri Prem Parkash which have been signed by him as Manager and in no other capacity and most of the documents have been admitted by him, as already observed. His contention that he was working only as a Booking Clerk and had no powers of finance or administration in the working of the Cinema is not borne out from the evidences on record; it is rather belied by the over-whelming documentary evidence produced by the management referred to above. His emoluments were admittedly less than Rs 500 but that is not the only criterion to determine whether a certain person is a workman or not within the meaning of Industrial Disputes Act, 1947. The definition of a workman is given in section 2-S of the Act which may usefully be reproduced as under :—

"Section 2-S (Workman) means any person employed in any industry to do any skilled or un-skilled manual, supervisory, technical or clerical work, but does not include any such person

- (i)
- (ii)

(iii) Who is employed mainly in a managerial, or administrative capacity, or

(iv) who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

In 1969-II-LLJ-670, Anand Patrika (P) Ltd. V/s their workmen, Hon'ble the Supreme Court has been pleased to hold that the test to be applied to find out whether a person is a workman or not is to assess whether he performed mainly managerial or supervisory duties or whether he performed mainly clerical duties.

Now, taking into consideration the entire facts of the instant case discussed above, I am quite clear in my mind that Shri Prem Parkash the present claimant had performing mainly managerial and administrative duties as the Manager of M/s Eros Cinema, Old Railway Road, Gurgaon and as such he was not a workman competent to raise an industrial dispute or to claim computation of his wages in accordance with the provisions of the Industrial Disputes Act, 1947. His authorised representative has not been able to satisfy me to the contrary. The issue is accordingly held against him and in favour of the management.

Shri Prem Parkash being thus not a workman, as defined under section 2-S of the Industrial Disputes Act, 1947 there was no industrial dispute which could validly be referred for adjudication under section 10 of the Act. The present reference is, therefore, held to be bad in law and without jurisdiction. For the same reason the application filed by Shri Prem Parkash asking for computation of his wages, as contemplated under section 33-C(2) of the Act, is also held to be not maintainable and is hereby dismissed. In the circumstances, there shall be no order as to cost.

Dated : 9th January, 1973.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 80, dated 12th January, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 546-4Lab-73/1992.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Mechanical Movements (P) Ltd., Bahadurgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 194 of 1972

between

SHRI DILBAGH SINGH AND THE MANAGEMENT OF M/S MECHANICAL
MOVEMENTS (P) LTD., BAHADURGARH

Present. —

Shri Rajinder Singh Dhayia, for the workman.
Shri D. C. Chadha, for the management.

AWARD

The management of M/s Mechanical Movements (P) Ltd., Bahadurgarh terminated the services of its workman Shri Dilbagh Singh. He raised a demand for his reinstatement but without success.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana referred the dispute for adjudication to this court,—vide order No. ID/RK/200-A-72/30476—80, dated 3rd August, 1972, the term of reference being as given under :—

“Whether the termination of services of Shri Dilbagh Singh was justified and in order? If not, to what relief is he entitled?”

On receipt of the order of reference usual notices were given to the parties and they put in their respective written statements. It is, however, not necessary to go into the merits of the case since an amicable settlement has been arrived at between the parties. The management has agreed to pay Rs. 450 in all to Shri Dilbagh Singh concerned workman by 10th January, 1973 in full and final settlement of his entire claims and he has given up his right of reinstatement or re-employment. The award is accordingly made and the management is directed to pay Rs. 450 to the workman in full and final settlement of his entire claims including the right of reinstatement or re-employment by the due date as agreed. In the circumstances, there shall be no order as to costs.

Dated 9th January, 1973.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 83, dated 12th January, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 547-4 Lab-73/1994.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s. B. C. Steel Rolling Mills, Bahadurgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 222 of 1972

between

SHRI CHANDER BHAN SHARMA AND THE MANAGEMENT OF M/S B. C. STEEL
ROLLING MILLS, BAHADURGARH

Present.—

Shri Rajinder Singh Dhayia, for the workman.
Nemo, for the management.

AWARD

Shri Chander Bhan Sharma concerned workman was in the Service of M/s B. C. Steel rolling Mills, Bahadurgarh as a Turner at Rs. 300/P. M. The management terminated his services w. e. f. 6th July, 1972, allegedly without giving any notice or charge-sheet. He raised a protest and demanded reinstatement but without any success. He then gave a demand notice, dated 7th July, 1972, and on receipt of the failure report from the Conciliation Officer, the Governor of Haryana referred the dispute for adjudication to this court,—vide No. ID/RK/205-A-72/36297-390 dated 3rd October, 1972, in exercise of the powers conferred under clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, the term of reference being as given under:—

“Whether the termination of Services of Shri Chander Bhan Sharma was justified and in order? If not, to what relief is he entitled?”

Usual notices were given to the parties and they were called upon to put in their respective written statements. Shri Chander Bhan Sharma concerned workman has filed the statement of claim reiterating his demand for reinstatement and back wages as earlier raised through the demand notice referred to above. It has been contended that his services were terminated by the management illegally and without any justification and no letter of termination of the services was communicated to him. The management has not come forward to contest his claim inspite of service and no written statement has been filed.

In support of his claim, Shri Chander Bhan Sharma has made his own statement on oath and proved the demand notice Exhibit W. 1 sent to the management and the Conciliation Officer,—vide A. D. receipts Exhibit W. 2 and W-3 after his direct approach to the management for re-instatement had failed. He has further stated that he has all along been out of job and not gainfully employed anywhere inspite of his efforts. There is apparently no reason to disbelieve his statement especially when the management has chosen not to appear and contest his claim inspite of service.

I, therefore, hold that the termination of the services of the workman concerned in the case was not justified and in order and in the result he is entitled to reinstatement with continuity of previous service and full back wages. The award is accordingly made, No order as to costs.

The 9th January, 1973.

O. P. SHARMA.

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 82, dated the 12th January, 1973

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 545-4 Lab-73/1996.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s B.E. Pumps (P) Ltd., Bahadurgarh.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 66 of 1971

between

SHRI OM PARKASH AND THE MANAGEMENT OF M/S B.E. PUMPS (P) LTD, BAHADURGARH

Present—

Shri C.B. Kaushik, for the workman.

Shri A.K. Seth, for the management.

AWARD

The management of M/s B.E. Pumps (P) Ltd., Bahadurgarh terminated the services of its workman Shri Om Parkash w.e.f. 25th September, 1970. He raised a demand for reinstatement but without success. The matter was taken up for conciliation and on receipt of the failure report from the Conciliation Officer, the Governor of Haryana,—vide order No. ID/RK/191-A-71-15930-34, dated 26th May, 1971 referred the dispute for adjudication to this court in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, with the following term of reference :—

“Whether the termination of services of Shri Om Parkash was justified and in order ? If not, to what relief is he entitled ?”

Usual notices were given to the parties and they put in their respective written statements. The management contended that the workman concerned was only a casual labourer engaged on trial basis and that he had absented himself from duty w.e.f. 20th September, 1970 after submitting his resignation and as such there was no industrial dispute which could validly be referred for adjudication to this court. The workman contravened the above allegations. The following issues arose for determination from the pleadings of the parties:—

1. Whether the applicant was appointed as a casual labourer and he was joined his duty on 26th May, on trial basis ?
2. Whether the workman was absent himself from duty w.e.f. 20th September, 1970 and lost interest in the employment and resigned his job ?
3. Whether there is no industrial dispute and the reference is invalid ?
4. Whether the termination of services of Shri Om Parkash was justified and in order ? If not, to what relief is he entitled ?

The management has examined 2 witnesses namely Shri K.L. Kumar, Time Keeper-cum-Store-keeper M.W. 1 and Shri C. Parshad, Works Manager M.W. 2. Reliance has further been placed upon the documentary evidence consisting of entries in the attendance register Ex. M.W. 1/1, resignation submitted by the workman on 3rd September, 1970 Ex. M.W. 1/2, application, dated 21st September, 1970 submitted by Shri Pritam Singh to the Manager for supply of 13 M.M. drill which had been broken by the workman concerned Ex. M.W. 1/3, report dated 5th August, 1970 submitted by Shri Bhajan Singh to the fact that this workman had broken 13 M.M. drill Ex. M.W. 1/4, application, dated 22nd August, 1971 Ex. M.W. 1/5 of the present workman admitting breakage of a machine by him, book containing breakage reports Ex. M.W. 1/6, recommendatory letter regarding appointment of this workman Ex. M.W. 1/7 and his application for appointment Ex. M.W. 1/8.

The workman concerned has made his own statement admitting that the resignation had not been withdrawn by him.

The case has been argued on both sides and I have given a careful consideration to the facts on record. The management has succeeded in proving that this workman had joined service on 25th May, 1970 on trial basis,—vide his application Ex. M.W. 1/8 on record. His work was not satisfactory and he was responsible for the breaking of certain valuable parts of machinery as a result of careless handling by him and the management wanted to recover the price of the same from him. His services were, therefore, not terminated forthwith although he had submitted his resignation on 3rd September, 1970 Ex. M.W. 1/2 on record. He was allowed to continue working in the factory and was marked present till 19th September, 1970. He absented himself from duty thereafter and his name was struck the rolls on 29th September, 1970. The facts discussed above have been conclusively established the relevant documents and the workman has not been able to rebut the same by any oral or documentary evidence.

In the circumstances, I do not find any thing wrong with the order of the termination of the services of this workman, issues numbers 1, 2 and 4 are accordingly decided against him and in favour of the management. Issue No. 3 has not been pressed.

On the facts established in the case and in view of my above findings on the issues involved, the question of the workman concerned being entitled to any relief by way of re-instatement does not arise. The award is made accordingly. He is however, entitled to his wages for the month of September, 1970 which have admittedly not been paid to him and the management undertakes to pay the same within one month of the publication of the award. There shall be no order as to costs.

The 9th January, 1973.

O.P. SHARMA

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 84, dated 12th January, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 13 of the Industrial Disputes Act, 1947.

O.P. SHARMA
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 544-4-Lab-73/1998.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Supreme Industries, Bahadurgarh.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 86 of 1970

Between

SHRI JASSU BHAI AND THE MANAGEMENT OF M/S SUPREME INDUSTRIES, BAHADURGARH

Present—

Shri Onkar Parshad for the workman.
Shri S. Rasija for the management.

AWARD

The facts giving rise to this reference under clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 may shortly be stated as under :—

Shri Jassu Bhai concerned workman was in the service of M/s Supreme Industries, Bahadurgarh. According to him the management refused him work in the factory without assigning any reason on the morning of 8th January, 1969. He raised a protest but without any success. This gave rise to an industrial dispute and on his demand notice dated 8th January, 1969 conciliation proceedings were initiated which ended in failure. The Governor of Haryana, therefore, referred the dispute for adjudication to this court vide order No. JD/RK/130-A-69/11511-15, dated 15th April, 1970, with the following term of reference.

“Whether the termination of services of Shri Jassu Bhai was justified and in order ? If not, to what relief is he entitled ?”

Usual notices were given to the parties and they filed their respective written statements. The management contested the claim of the workman mainly on the ground that he had left service of his own accord and it was not a case of termination of services by the management. It was further pleaded that there was no industrial dispute in the eye of law as the demand had not been first raised on the management and rejected by it before the matter was taken up for conciliation. Shri Jassu Bhai concerned workman controverted the above allegation and re-iterated his claim for reinstatement with back wages as earlier raised through the demand notice dated 8th January, 1969 which forms part of the present reference.

The pleadings of the parties gave rise to the following issues :—

1. Whether the reference is invalid because there is no industrial dispute between the parties ?
2. Whether the Loh Udyog Karamchari Sangh has no locus Standi to represent the workman ?
3. Whether the claimant Shri Jassu Bhai voluntarily abandoned his employment ? If not, to what relief is he entitled ?

The management has examined 3 witnesses M.W. 1 Shri O.P. Monga, Proprietor, M.W. 2 Shri Gurmukh Singh and M.W. 3 Kumari Raksha Devi its employees. Raliance has also been placed upon documentary evidence consisting of appointment letter of Shri Jassu Bhai Ex. M.1, letter dated 15th January, 1969 Ex M.2, Postal receipts Ex. M.3, letter of March, 1969 M.4, postal certificate M. 5, letter sent to the Labour Commissioner/Conciliation Officer and to the union of the workers Ex. M.5. The management has further referred to the relevant entries in the attendance-cum-payment of wages register of 1969 bearing inspection remarks of the E.S.I. Inspector on 13th January, 1969.

The workman concerned has besides examining himself and his authorised representative Shri Onkar Parshad brought on record three letters from the Conciliation Officer Ex. W.1, Ex. W. 2, Ex. W. 3 and has further referred to two demand notices Ex. W. 4 and Ex. W. 5.

Arguments have been heard. I have given a very careful consideration to the facts on record and the contentions raised by the learned representatives of the parties. The issues may be taken up separately.

Issue No. 1—

According to the rule of law laid down by Hon'ble the Supreme Court in the Sandhu Re-settlement Corporation case the demand has first to be raised direct on the management and rejected by it in order to constitute an industrial dispute which can validly be referred for adjudication to a Labour Court or Industrial Tribunal. Following the above decision the Delhi High Court was pleased to observe as under in the case of M/s Fedders Lloyd Corporation Pvt. Ltd. and Lt. Governor, Delhi and others reported in 1970(20)-FLR-P-343-352:—

- "14. We are of the view that the decision of the Supreme Court in Sindhu Resettlement Corporation V. Industrial Tribunal, Gujrat (Supra), referred to above, has finally established the proposition that a demand by the workman must be raised first on the management and rejected by them before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejects the same is not sufficient to constitute an industrial dispute. The decision and dicta of some of the High Courts to the contrary can no longer be considered good law."

From a close scrutiny of the evidence produced on both sides the conclusion is irresistible that the demand for reinstatement of the workman concerned in the instant case had not been first raised on the management and rejected by it so as to constitute an industrial dispute as laid down in the aforesaid authorities. In view of the specific denial of the management in this behalf the burden was upon the workman to produce cogent and convincing evidence to show that he had approached the management verbally or in writing to demand his reinstatement before taking up the matter for conciliation but he has simply failed to discharge this burden. According to him his services were terminated on 8th January, 1969 and it was on that very date that the demand notice leading to the present reference was given to the management as well as the Conciliation Officer. There is no proof of the delivery of the demand notice direct to the management and the mere communication of a copy of the demand notice by the Conciliation Officer to the management was not enough to constitute the industrial dispute as already discussed. No postal certificate or A.D. receipt has been brought on record to support this contention and, in the circumstances of the case, I find no reason to disbelieve the statement of Shri O.P. Monga, Proprietor that no demand notice had ever been received from the workman concerned or his union. There being thus no compliance with the requirements of law in the matter it could not be held that the demand had been properly raised by the workman concerned to constitute an industrial dispute which could validly be referred for adjudication to this court. Issue No. 1 is accordingly decided against the workman.

Issue No. 2—

The burden of this issue was upon the management and from the pursual of the evidence led in the case, both oral as well as documentary, it would be clear beyond any shadow of doubt that the management has fully succeeded in discharging this burden. There is the statement of Shri O.P. Monga, Proprietor on oath that Shri Jassu Bhai concerned workman who was residing in Delhi has asked for residential accommodation at Bahadurgarh as much of his time was wasted in coming from and going back to Delhi and when the management shared its inability to provide him with the residential accommodation asked for he had expressed his desire to leave the job and actually did not visit the factory after absenting himself from duty in the month of January, 1969 nor did the management receive any communication from him. This statement of Shri O.P. Monga finds further support in the testimony of 2 co-workers of Shri Jassu Bhai, namely, Shri Gurcharan Singh M.W. 2 and Kumari Raksha Devi M.W. 3 who had, seen him selling crockery in Kingsway Camp at Delhi after he had left service with the management. These witnesses are not shown to be in any way inimical towards Shri Jassu Bhai concerned workman and their testimony should, therefore carry weight.

There is another suspect of the case which tallies the version of Shri Jassu Bhai concerned workman that he had not abandoned service himself and that it was the management who had terminated his service without any justification. After he had absented himself from duty in the month of January, 1969, the management had addressed to him 2 communications Ex. M. 2 dated 15th January, 1969 and Ex. M. 4, dated 19th March, 1969 asking him to resume his work and explain the cause of his absence from duty before finally striking his name off the rolls. He did not care to send any reply to these communications obviously for the reason that he was no longer interested in serving in this factory may be due to for want of residential accommodation at Bahadurgarh or for any other reason better known to him. In any case, taking into consideration the facts brought on record the management can not be held responsible for terminating his services without any reasonable ground. It is clearly not a case of victimisation and no malafides on the part of the management have been proved. It will not be out of place to consider here that, as would be clear from the pursual of his appointment letter Ex. M.1 on record, he was on probation for one year but he had voluntarily left service after 6 or 7 months. If the management had any ill-will against him his services could be easily terminated without giving any notice or assigning any reason as laid down in the appointment letter itself. Moreover, why should the management write to him twice asking him to resume his duty vide letters Ex. M.2 and Ex. M.4, if the intention was otherwise to terminate his services.

That disposes of the entire case and for the reasons aforesaid issue Number 2 is decided against the workman and it is held that he had in fact left service of his own accord and it is not a case of termination of his services by the management. In view of my above findings on issue No. 2 the order of the termination of the services of Shri Jassu Bhai by the management even if made can not, in the circumstances of the case discussed above be held to be unjustified or not in order. He was on probation for a period of one year and since he had absented himself from duty after 6 or 7 months without any proper authorisation, the management was well within its right to terminate his services. Issue number 3 is also decided against him.

On the above findings on the issues involved in the case, the workman concerned is not entitled to any relief by way of reinstatement or payment of back wages. The reference is accordingly answered against him. There shall be no order as to costs.

Dated, 10th January, 1973.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 85, dated 12th January, 1973

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 455-4 Lab-73/2000.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workman and the management of M/s Delhi Pulp Industries, Plot No. 50, N.I.T., Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 60 of 1972

between

SHRI JOKOO WORKMAN AND THE MANAGEMENT OF M/S DELHI PULP INDUSTRIES,
PLOT No. 50, N.I.T., FARIDABAD

Present.—

Shri B. M. Gupta, for the workman.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/FD/72/36339, dated 3rd October, 1972 of the Governor of Haryana, the following dispute between the management of M/s Delhi Pulp Industries, Plot No. 50, N. I. T., Faridabad, and its workman Shri Jokoo was referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Jokoo was justified and in order? If not, to what relief is he entitled?

Usual notices were given to the parties. The authorised representative of the management has stated that as a matter of fact this workman has already settled his account and there is now no dispute left between the parties. Shri B. M. Gupta, Office Secretary of the Industrial Workers Union Regd., N.I.T. Faridabad who gave the demand notice leading to the present reference has also stated that Shri Jokoo concerned workman has gone back to U.P. and his whereabouts are not known. In the circumstances the Union is not in a position to pursue the reference or to refute the plea of the settlement of the dispute raised by the management.

In view of the above a no dispute award is made as requested by the parties. No order as to costs.

Dated, 10th January, 1973.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 44, dated the 12th January, 1973

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated, 10th January, 1973.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Fridabad.

S. N. BHANOT,
Commissioner for Labour & Employment,
and Secretary to Government, Haryana.